

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

HOWARD K. SELZER and )  
ARIEL SELZER )  
Plaintiffs )  
vs. ) No. 4:17-cv-3175  
)  
BLUE CROSS BLUE SHIELD OF TEXAS )  
A DIVISION OF HEALTH CARE )  
SERVICE CORPORATION, A MUTUAL )  
LEGAL RESERVE COMPANY )  
Defendant )

**APPENDIX TO NOTICE OF REMOVAL**

Health Care Service Corporation, a Mutual Legal Reserve Company, operating in Texas through its division Blue Cross and Blue Shield of Texas (“BCBSTX” or “Defendant”), respectfully files the following Appendix to Notice of Removal.

Exhibit 1: Citation in Case No. 17-DCV-244905; *Howard K. Selzer and Ariel Selzer v. Blue Cross Blue Shield of Texas*; In the 240th District Court, Fort Bend County, Texas, issued on September 15, 2017.

Exhibit 2: Original Petition in Case No. 17-DCV-244905, filed September 14, 2017.

Exhibit 3: Original Answer in Case No. 17-DCV-244905, filed October 16, 2017.

Exhibit 4: List of all counsel of record.

Respectfully submitted,

By:/s/ Andrew F. MacRae

ANDREW F. MACRAE

State Bar No. 00784510

LEVATINO|PACE PLLC

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Attorneys for Defendant

**SERVICE FEE NOT COLLECTED  
BY DISTRICT CLERK  
THE STATE OF TEXAS**

DELIVERED: 9/21/17  
by: GC  
Assured Civil Process Agency

**CITATION**

TO: **BLUE CROSS AND BLUE SHIELD OF TEXAS  
C/O CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET SUITE 620  
AUSTIN TX 78701-3218**

**NOTICE:**

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on Monday next following the expiration of twenty days after you were served this citation and **PLAINTIFFS' ORIGINAL PETITION** filed on **September 14, 2017**, a default judgment may be taken against you.

The case is presently pending before the **240TH JUDICIAL DISTRICT COURT** of Fort Bend County sitting in Richmond, Texas. It bears cause number **17-DCV-244905** and is styled:

**HOWARD K SELZER AND ARIEL SELZER VS BLUE CROSS AND BLUE SHIELD OF TEXAS, A  
DIVISION OF HEALTH CARE SERVICE CORPORATION**

The name and address of the attorney for **PLAINTIFF** is:

**JON MICHAEL SMITH  
JON MICHAEL SMITH ATTORNEY  
3305 NORTHLAND DR STE 500  
AUSTIN TX 78731-4991  
512-371-1006**

The nature of the demands of said **PLAINTIFF** is shown by a true and correct copy of the **PLAINTIFFS' ORIGINAL PETITION** accompanying this citation and made a part hereof.

If this Citation is not served, it shall be returned unserved. Issued under my hand and seal of said Court, at Richmond, Texas, on this the 15th day of September, 2017.

**ANNIE REBECCA ELLIOTT, DISTRICT CLERK  
FORT BEND COUNTY, TEXAS**

**Physical Address:**

1422 Eugene Heimann Circle, Room 10142  
Richmond, Texas 77469

**Mailing Address:**

301 Jackson Street  
Richmond, Texas 77469

By: *Brandy R Worthington*  
Deputy District Clerk BRANDY R WORTHINGTON  
Telephone: (281) 341-4502



**SERVICE**



Filed  
9/14/2017 10:02 AM  
Annie Rebecca Elliott  
District Clerk  
Fort Bend County, Texas  
Shelby Taylor

No. 17-DCV-244905

HOWARD K. SELZER and ARIEL SELZER, § IN THE DISTRICT COURT OF  
Plaintiffs §  
§  
v. § FORT BEND COUNTY, TEXAS  
§  
BLUE CROSS AND BLUE SHIELD OF §  
TEXAS, A DIVISION OF HEALTH CARE §  
SERVICE CORPORATION, § Fort Bend County - 240th Judicial District Court  
Defendant § JUDICIAL DISTRICT

Plaintiffs' Original Petition

TO THE HONORABLE COURT:

Howard K. Selzer and Ariel Selzer, Plaintiffs, respectfully file this original petition complaining of Blue Cross and Blue Shield of Texas, a division of Health Care Service Corporation, ("Blue Cross") and would show:

I. Discovery Control Plan, Level 2

Pursuant to Texas Rule of Civil Procedure 190.3, this case is governed by Discovery Control Plan, Level 2.

II. Nature of the Case

Plaintiffs' claims arise from BCBS's failure to provide health insurance coverage as agreed and as paid for by Plaintiffs. Pursuant to Texas Rule of Civil Procedure 47, Plaintiffs state that they seek damages within the jurisdictional limits of this court, specifically monetary relief over \$200,000.00 but not more than \$1,000,000..

**III. Parties**

Plaintiffs are individuals residing in Fort Bend County, Texas.

Defendant, Blue Cross Blue Shield of Texas, a division of Health Care Service Corporation, is a foreign insurance company that is doing business in Texas and may be served with citation by and through its registered agent, Corporation Service Company, 211 East 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218.

**IV. Venue**

Venue is proper in Fort Bend County because all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Fort Bend County. Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(1).

**V. Conditions Precedent**

All conditions precedent to recovery have been met or have occurred.

**VI. Facts of the Case**

The Selzers sought and acquired health insurance through BCBS. Between 2014 and 2016 Ariel Selzer required treatment at the Meninger Clinic, Life Skills South Florida and the Houston OCD program. BCBS denied coverage for the services provided at each of those facilities. The Selzers appealed each denial and BCBS denied each appeal.

**VII. First Cause of Action: Breach of Contract**

BCBS's actions amount to a breach of the contract between the Selzers and Blue Cross. The Selzers applied for and were accepted for insurance coverage by BCBS. They paid the required premiums, entering into a binding contract for insurance with Blue Cross. Blue Cross breached the contract by denying the above-referenced claims. The Selzers are entitled to recover their actual damages, court costs and reasonable and necessary attorney's fees pursuant to Texas Civil Practice & Remedies Code, Section 38.001, et seq.

**VIII. Second Cause of Action: Texas Insurance Code Section 541.060**

BCBS's actions as described above amount to Unfair Settlement Practices as defined by Texas Insurance Code, Section 541.060. Specifically, BCBS has misrepresented facts and policy provisions and has failed to attempt in good faith to settle claims on which liability has become clear. BCBS's violations have been a producing cause of damages to Plaintiffs. Because BCBS has acted knowingly, Plaintiffs are entitled to an additional award of three times their actual damages. Texas Insurance Code, Section 541.152(b). They are also entitled to their reasonable and necessary attorney's fees.

**IX. Third Cause of Action: Texas Insurance Code Sections 542.051-061**

BCBS's actions also amount to a violation of Texas Insurance Code, Sections 542.051-061. As such, Plaintiffs are entitled to 18% per annum in addition to the amount of their claim, plus attorneys' fees.

**X. Jury Demand**

Plaintiffs have requested that this case be decided by a jury as allowed by Tex. R. Civ. P.  
216. The appropriate jury fee has been paid.

**XI. Prayer**

Plaintiffs pray that upon final trial of this case they have judgment against Defendant for actual damages, an additional three times their actual damages, reasonable and necessary attorney's fees, pre-judgment and post-judgment interest, costs of court, the declarations set forth above and such other relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

/s/ Jon Smith  
JON MICHAEL SMITH  
State Bar No. 18630750  
3305 Northland Drive  
Suite 500  
Austin, Texas 78731  
512/371-1006  
512/476-6685 fax  
jon@jonmichaelsmith.com

**CAUSE NO. 17-DCV-244905**

HOWARD K. SELZER and ARIEL  
SELZER,

**Plaintiffs,**

V.

BLUE CROSS BLUE SHIELD OF  
TEXAS, A DIVISION OF HEALTH  
CARE SERVICE CORPORATION,

Defendant.

**IN THE DISTRICT COURT**

A decorative vertical flourish consisting of a series of stylized, symmetrical loops or swirls, resembling a decorative scroll or a stylized letter 'S' repeated vertically.

## FORT BEND COUNTY, TEXAS

## 240<sup>TH</sup> JUDICIAL DISTRICT

## ORIGINAL ANSWER

Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, operating in Texas through its division Blue Cross and Blue Shield of Texas (“Defendant”), files this Original Answer.

Defendant denies each and every, all and singular, the material allegations contained in the Plaintiffs' Original Petition and demands strict proof by a preponderance of the evidence. This constitutes a general denial pursuant to Rule 92 of the TEXAS RULES OF CIVIL PROCEDURE.

WHEREFORE, PREMISES CONSIDERED, Defendant requests that Plaintiffs take nothing by this lawsuit and Defendant recover its costs. Defendant further requests such other relief, both legal and equitable, to which it may show itself justly entitled.

Respectfully submitted,

By: /s/ Andrew F. MacRae

ANDREW F. MACRAE

*State Bar No. 00784510*

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Attorney for Defendant  
Health Care Service Corporation, a Mutual  
Legal Reserve Company, operating in Texas  
through its division Blue Cross and Blue Shield  
of Texas

**CERTIFICATE OF SERVICE**

I hereby certify that I forwarded a true and correct copy of this Original Answer on October 16, 2017, via e-mail and/or electronic filing, to the following counsel of record:

Jon Michael Smith  
3305 Northland Drive  
Suite 500  
Austin, Texas 78731

/s/ Andrew F. MacRae  
Andrew F. MacRae

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Defendant )

**LIST OF ALL COUNSEL OF RECORD**

Plaintiff's Counsel:

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Defendant's Counsel:

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EXHIBIT

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